

BOARD OF ADJUSTMENT
MINUTES OF
REGULAR MEETING
October 17, 2024

The regular meeting of the City of Daytona Beach Board of Adjustment was held on Thursday, October 17, 2024, in the City Commission Chambers, 301 S. Ridgewood Avenue, Daytona Beach, Florida.

Board members present were as follows:

John George, Vice Chair
Sharlene Barhoo
Charles Cameron
Patrick Connors
Leon McCray

Board members absent were as follows:

David Betz, Chair

Staff members present were:

Melissa Phillips, Development Review Technician
David Russell, Assistant City Attorney
Becky Groom, Board Secretary

1. Call to Order

Mr. George called the meeting to order at 2:30 p.m. Mr. George stated he is serving as Chair during the absence of Mr. Betz.

Mr. George welcomed the two new Board members, Mr. Cameron and Mr. McCray.

2. Roll Call

Ms. Groom called the roll and noted members present as indicated above.

3. Introduction of City Staff

Mr. George introduced staff members in attendance as listed above.

4. Approval of Minutes

Mr. George stated approval of the minutes will be continued to the next meeting so that all members that attended the September meeting would have an opportunity to provide input on the minutes.

5. **New Cases**

Case A - BOA2024-020 Variance from Article 5, Section 5.2.B and Article 6, Section 6.2 of the CODB Land Development Code

A request by Storch Law Firm, representing Amin Odeh (Property Owner), for a variance from several numerical and dimensional standards noted in the **CODB Land Development Code (LDC), Article 5 (Use Standards), Section 5.2.B.18.d (Use Specific Standards, Restaurant with Drive-through Service) and Article 6 (Development Standards), Section 6.2. (Off-Street Parking and Loading).**

This variance approval will allow an existing, nonconforming drive-through to be utilized in its current configuration while not meeting current LDC requirements. This variance approval will also resolve active Code Enforcement cases C2024-1347 and C2404-1383.

The property is located at **1079 Mason Avenue, Parcel ID 5238-05-00-0020.**

Applicant Presentation:

Joey Posey, Storch Law Firm, spoke representing the applicant. Mr. Posey stated the site was previously the location of a Kentucky Fried Chicken; and when Kentucky Fried Chicken relocated, requirements under the new Land Development Code were enforced and the drive-thru is no longer permitted. Mr. Posey stated there are also restrictions due to the historic tree that is on site. Mr. Posey stated the current owner is aware of the restrictions and wants to work through the process.

Mr. George noted there is a Code Enforcement case for use of the drive-thru after the new owner purchased the property.

Amin Odeh stated he is the property owner of 1079 Mason Avenue. Mr. Odeh stated he previously spoke with Ms. Phillips about the drive-thru and did not plan to open it as part of his business use; however, he stated people were leaving and he was losing business since the drive-thru was not open. Mr. Odeh stated his business greatly increased once the drive-thru was opened.

Mr. Posey stated the applicant is asking that the request be approved as the same that was in place for the Kentucky Fried Chicken.

Mr. Connors asked if there are other alternatives that have been discussed.

Mr. Posey stated the applicant could go through the rezoning process which would be a 6 month process, including the hiring of an engineer to develop a site plan which would be a huge expense for the applicant and may result in the same outcome.

Ms. Barhoo asked if anything had changed in the site or is it the same drive-thru.

Mr. Posey stated it is the same and nothing has changed.

Mr. Connors asked what changed in the Code.

Ms. Phillips stated a bypass lane is now required in the event someone is waiting in the drive-thru lane so they would be able to pull into the bypass lane should they want to leave. Ms. Phillips stated an additional stacking space is also required.

Mr. Posey stated if the bypass lane is installed, the historical tree would have to be removed, and the FPL improvements would have to be relocated. Mr. Posey noted the drive-thru lane is on the rear of the property.

Mr. Connors stated there is also a second exit from the property.

Mr. Cameron suggested signage be placed identifying the drive-thru as well as the additional exit.

Mr. Posey stated the applicant would be happy to comply with that restriction.

Public Comments:

Mary Butron, 530 Mason Avenue, stated the City's Code specifically states there is to be no drive-thru at this site and feels the operator is in defiance of the City's requirements.

Mr. Odeh stated there is a personal issue with Ms. Butron related to another business and that is why she is here today.

Daniel Garten, 938 Hibiscus, stated he previously considered purchasing this property and was told the drive-thru was not permitted. Mr. Garten stated now every day at 5:00 the drive-thru is open.

Board Action:

A motion was made by Ms. Barhoo, seconded by Mr. Cameron, to approve BOA2024-020 Variance from Article 5, Section 5.2.B and Article 6, Section 6.2 of the CODB Land Development Code, in accordance with the staff report as presented, including the requirement that the variance will continue only as long as the property is used as a restaurant and all of the requirements of the Code be met, including repairs to the dumpster gate and landscaping and that signage be installed to identify the drive-thru lane and to provide direction to the second exit. The motion carried 4-1 with Mr. Connors voting nay.

Case B - BOA2024-021 Variance from Article 4, Section 4.2.B of the CODB Land Development Code

A request by Lemoine Building Construction, in conjunction with Transform386, representing Josephine Shaw (Property Owner), for a variance from **Article 4 (Zoning Districts), Section 4.2.B (Single-Family Residential-5/SFR-5)** of the **CODB Land Development Code (LDC)** for a **single-family residential structure, to reduce the required interior side yard setback from 7.5ft to 4.3 ft.**

This variance approval will allow a new, 1,320sf, single-family home to be built on this property, replacing an existing single-family home that was damaged by Hurricane Ian, which encroaches into the interior side yard setbacks.

The property is located at **634 Tomoka Road, Parcel ID 5238-13-03-0280.**

Applicant Presentation:

Brandon Lemoine spoke representing the applicant, Josephine Shaw. The applicant proposes to construct a new home which will replace an existing single-family home that was damaged by Hurricane Ian. Mr. Lemoine stated what is proposed is the only option available in order for Ms. Shaw to receive Federal funding.

Josephine Shaw, 634 Tomoka Road, stated she is the property owner, and this program will provide her and her family with a new home that will meet the current Codes.

Public Comments:

There were no public comments.

Board Action:

A motion was made by Mr. Connors, seconded by Mr. McCray, to approve BOA2024-021 Variance from Article 4, Section 4.2.B of the CODB Land Development Code, in accordance with the staff report as presented. The motion carried (5-0).

6. **Review Cases**

Case A – approved 4-1

Case B – approved 5-0

7. **New Business**

Mr. Connors extended condolences to Mr. Betz on behalf of the Board on the recent loss of his family members.

Ms. Phillips stated the Zone 6 vacancy, and the alternate position is still vacant.

8. **Adjournment**

There being no further business, the meeting was adjourned.



John George, Vice Chair



Becky Groom, Board Secretary